

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 5**  
**94TH GENERAL ASSEMBLY**

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Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 8, 2007, with recommendation that the Senate Committee Substitute do pass.

0310S.05C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 573.025, 573.035, and 573.037, RSMo, and to enact in lieu thereof five new sections relating to child pornography, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 573.025, 573.035, and 573.037, RSMo, are repealed  
2 and five new sections enacted in lieu thereof, to be known as sections 537.047,  
3 573.025, 573.035, 573.037, and 573.038, to read as follows:

**537.047. 1. Any person who, while a child or minor as defined by**  
2 **section 573.010, RSMo, was a victim of a violation of sections 573.023,**  
3 **573.025, 573.035, or 573.037, RSMo, and who suffers physical or**  
4 **psychological injury or illness as a result of such violation, shall be**  
5 **entitled to bring a civil action to recover the actual damages sustained**  
6 **as a result of the violation, and shall also be entitled to recover the**  
7 **costs of the civil action and reasonable fees for attorneys and expert**  
8 **witnesses. A psychological injury or illness as described under this**  
9 **section need not be accompanied by physical injury or illness.**

10 **2. Any action described under this section shall be commenced**  
11 **within ten years of the plaintiff attaining the age of twenty-one, or**  
12 **within three years of the date the plaintiff discovers that the injury or**  
13 **illness was caused by the violation of an offense enumerated in**  
14 **subsection one of this section, whichever later occurs.**

15 **3. A cause of action under this section may arise only if the**  
16 **violation that caused the injury occurs on or after August 28, 2007.**

573.025. 1. A person commits the crime of promoting child pornography

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

2 in the first degree if, knowing of its content and character, such person possesses  
3 with the intent to promote or promotes [obscene material that has a child as one  
4 of its participants or portrays what appears to be a child as a participant or  
5 observer of sexual conduct] **child pornography of a child less than fourteen**  
6 **years of age or what appears to be a child less than fourteen years of**  
7 **age.**

8 2. Promoting child pornography in the first degree is a class B felony  
9 unless the person knowingly promotes such material to a minor, in which case it  
10 is a class A felony. **No person who pleads guilty to or is found guilty of**  
11 **such crime shall be eligible for probation, parole, or conditional release**  
12 **for a period of three calendar years.**

13 3. Nothing in this section shall be construed to require a provider of  
14 electronic communication services or remote computing services to monitor any  
15 user, subscriber or customer of the provider, or the content of any communication  
16 of any user, subscriber or customer of the provider.

573.035. 1. A person commits the crime of promoting child pornography  
2 in the second degree if knowing of its content and character such person  
3 possesses with the intent to promote or promotes child pornography [or obscene  
4 material that has a minor as one of its participants, or portrays what appears to  
5 be a minor as a participant or observer of sexual conduct] **of a minor under the**  
6 **age of eighteen or what appears to be a minor under the age of**  
7 **eighteen.**

8 2. Promoting child pornography in the second degree is a class C felony  
9 unless the person knowingly promotes such material to a minor, in which case it  
10 is a class B felony. **No person who is found guilty of, pleads guilty to, or**  
11 **is convicted of promoting child pornography in the second degree shall**  
12 **be eligible for probation.**

573.037. 1. A person commits the crime of possession of child  
2 pornography if, knowing of its content and character, such person possesses any  
3 [obscene material that has a child as one of its participants or portrays what  
4 appears to be a child as an observer or participant of sexual conduct] **child**  
5 **pornography.**

6 2. Possession of child pornography is a class [D] C felony unless the  
7 person **possesses more than twenty images of child pornography or** has  
8 pleaded guilty to or has been found guilty of an offense under this section, in  
9 which case it is a class [C] B felony.

573.038. 1. In any criminal proceeding, any property or material  
2 that constitutes child pornography shall remain in the care, custody,  
3 and control of either the state or the court.

4 2. (1) Notwithstanding Missouri Rule of Criminal Procedure  
5 25.03 or any other rule or statute to the contrary, a court shall deny, in  
6 any criminal proceeding, any request by the defendant to copy,  
7 photograph, duplicate, or otherwise reproduce any property or  
8 material that constitutes child pornography, so long as the state makes  
9 the property or material reasonably available to the defendant.

10 (2) For the purposes of subdivision (1) of this subsection,  
11 property or material shall be deemed to be reasonably available to the  
12 defendant if the state provides ample opportunity for inspection,  
13 viewing, and examination at a state or other governmental facility of  
14 the property or material by the defendant, his or her attorney, and any  
15 individual the defendant may seek to qualify to furnish expert  
16 testimony at trial.

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Bill

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